



0000071089

1 BEFORE THE ARIZONA CORPORATION

2

3 IN THE MATTER OF:)
4 TIERRA GROUP, aka TIERRA GROUP)
5 PROPERTIES, aka TIERRA GROUP) DOCKET NO:
6 COMPANIES, aka TIERRA GROUP,) S-03437A-03-0000
7 INC., et al.,)

PREHEARING

8

9

10

11

At: Phoenix, Arizona

12

Date: March 12, 2003

13

Filed: **MAR 24 2003**

14

15

16

REPORTER'S TRANSCRIPT OF PROCEEDINGS

17

18

19

20

ARIZONA REPORTING SERVICE, INC.

Court Reporting

21

Suite Three

2627 North Third Street

22

Phoenix, Arizona 85004-1126

23

By: COLETTE E. ROSS
Prepared for: Certified Court Reporter
Certificate No. 50658

24

ACC

25

ORIGINAL

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, in Hearing Room 1
4 of said Commission, 1200 West Washington Street,
5 Phoenix, Arizona, commencing at 10:04 a.m. on the 12th
6 of March, 2003.

7

8

BEFORE: MARC E. STERN, Administrative Law Judge

9

10 APPEARANCES:

11

For the Arizona Corporation Commission:

12

Mr. Jamie B. Palfai
13 Staff Attorney, Legal Division
1200 West Washington Street
14 Phoenix, Arizona 85007-2927

15

For the Respondent:

16

LAW OFFICES OF JOHN R. AUGUSTINE, JR., PC.
17 By Mr. John R. Augustine, Jr.
2727 North Third Street, Suite 300
18 Phoenix, Arizona 85004

19

20

21

22

COLETTE E. ROSS
Certified Court Reporter
23 Certificate No. 50658

24

25

1 ALJ STERN: Let's go on the record briefly.

2 Okay, gentlemen. All right. This is the
3 prehearing matter of Tierra Group, also known as
4 Tierra Group Properties, also known as Tierra Group
5 Companies, also known as Tierra Group, Incorporated,
6 et al., in Docket S-03437A-03-0000.

7 My name is Marc Stern. I will preside over
8 this matter today. And we will see where we are at at
9 this time.

10 And appearances will be taken on behalf of
11 Division.

12 MR. PALFAI: Jamie Palfai on behalf of the
13 Securities Division.

14 ALJ STERN: And on behalf of the respondents,
15 I think?

16 MR. AUGUSTINE: John Augustine of John R.
17 Augustine, Jr., P.C., appearing on behalf of
18 respondent Rene Couch. I am also specially appearing
19 on behalf of the other entities other than Terry Couch
20 for the purposes of securing the hearing dates and
21 moving forward.

22 ALJ STERN: You know, this is the first time
23 I have ever seen a special appearance in a securities
24 matter. I mean you either represent these entities or
25 not. I mean are there conflicts?

1 MR. AUGUSTINE: Well, the corporate entities
2 can't appear without counsel.

3 ALJ STERN: Right.

4 MR. AUGUSTINE: There is no money to pay for
5 attorneys. So...

6 ALJ STERN: Well, obviously your client can
7 pay you to represent corporate.

8 MR. AUGUSTINE: Well, he used to be able to.
9 I don't know that he is able to do that anymore but at
10 one time he was able to pay. And I am continuing to
11 assist him.

12 ALJ STERN: So you are representing Rene
13 Couch, I guess --

14 MR. AUGUSTINE: That's correct.

15 ALJ STERN: -- period?

16 Those are in default.

17 MR. AUGUSTINE: They have requested a
18 hearing.

19 ALJ STERN: They didn't request a hearing.

20 MR. AUGUSTINE: Yes, they --

21 ALJ STERN: You requested a hearing for
22 Mr. Couch. And if you are going to represent them,
23 you have to acknowledge on the record who you do
24 represent.

25 MR. AUGUSTINE: I believe that my request

1 says I am specially appearing on behalf of the
2 corporate entities for the purpose of requesting a
3 hearing.

4 ALJ STERN: I understand what you said in
5 your request for a hearing. But there is nothing in
6 the rules that provides for any special appearances.
7 I know there are special actions to the Supreme Court.
8 I don't know about special appearances before the
9 Corporation Commission. John, I never had any --

10 MR. AUGUSTINE: It is on your cover sheet.
11 It is on the Commission cover sheet.

12 ALJ STERN: What is that?

13 MR. AUGUSTINE: It is on the cover sheet for
14 Docket Control every time we file.

15 ALJ STERN: I don't know who prepared that.
16 But you either represent someone or you don't
17 represent them. I will have to look at the cover
18 sheet. But the only thing I can think that would
19 relate to is for an out-of-state attorney or
20 something. I don't really know why that is there.

21 MR. AUGUSTINE: I ticked that box.

22 ALJ STERN: Well, you know --

23 MR. PALFAI: Couldn't that be for an instate
24 attorney representing an out-of-state firm that just
25 hired a local counsel, too?

1 ALJ STERN: Well, as pro hoc vice, yes, under
2 Rule 33D --

3 MR. PALFAI: They might have hired local
4 counsel for the purpose of representing them legally
5 even though the real counsel is out of state.

6 ALJ STERN: Perhaps. I think that is about
7 it. We get into these situations where, you know,
8 people say they are representing somebody.

9 Mr. Salcido, in a case that is presently
10 pending before the Commission, I think he is
11 representing 14 out of 15 respondents, or something
12 like that. One respondent was fired or left the
13 company so he is not representing him. But everyone
14 else, he does represent them for purposes of resolving
15 the case. I guess, if the case isn't settled, it will
16 go to hearing, he may not represent all the parties
17 because of divergent interests. But he is hired to
18 represent everyone in the initial stages of the
19 matter.

20 So I don't know what to say to you.

21 MR. AUGUSTINE: I will tell you what I will
22 do. I will appear on their behalves with the
23 understanding that at some point I may have to
24 withdraw as to the others, so you know.

25 ALJ STERN: There is a big difference here.

1 See, here is the situation: If no one is representing
2 them, then they are defaults.

3 MR. AUGUSTINE: I understand that.

4 ALJ STERN: They are defaults of answer
5 because no one has retained you to represent them,
6 some official of the company.

7 The companies are in existence still?

8 MR. AUGUSTINE: They exist, yes. In fact,
9 they are in bankruptcy right now in the United States
10 Bankruptcy Court for the District of Arizona.

11 ALJ STERN: Well, I imagine the receiver, or
12 whoever was hired to represent them, if he chose to.
13 Apparently he hasn't. I am not sure you have
14 authority.

15 MR. AUGUSTINE: There is a receiver.

16 ALJ STERN: Go talk to him. I don't think
17 you can represent these corporations if they are in
18 bankruptcy and the receiver is operating them or
19 someone is operating it.

20 MR. AUGUSTINE: Gerald Smith of the law firm
21 Lewis and Roca is the trustee in at least, or, excuse
22 me, the receiver in at least one of the bankruptcies.

23 ALJ STERN: This is a total different
24 situation.

25 Does the Division have any input on this?

1 MR. PALFAI: I would just cite to the filing.
2 It says limited purposes, for the sole purposes of
3 requesting a hearing on behalf of such respondents.

4 Is he going to disassociate himself from
5 everyone after this filing? I mean is anyone
6 representing the companies right now?

7 ALJ STERN: That's what -- I don't think they
8 are. And if there is bankruptcy, there are receivers
9 and trustees. And, you know, these are the people
10 that should be representing these so-called
11 corporations, or whatever they are, trusts,
12 partnerships. I don't --

13 Are you representing -- who is -- oh.

14 MR. AUGUSTINE: Rene is Mr. Couch.

15 ALJ STERN: You represent Mr. Couch?

16 MR. AUGUSTINE: Yes. Mr. and Mrs. Couch are
17 divorced.

18 ALJ STERN: All right. And Mrs. Couch didn't
19 request a hearing?

20 MR. AUGUSTINE: Not to my knowledge.

21 ALJ STERN: Did you ever serve her?

22 MR. PALFAI: We did serve her. Service was
23 effected and it was done properly.

24 MR. AUGUSTINE: Does she still have time?

25 ALJ STERN: No.

1 MR. PALFAI: I think her time has run out.

2 A VOICE: January 24th.

3 MR. PALFAI: It has been over a month.

4 MR. AUGUSTINE: Sadly I don't know that she
5 has any liability or, if she does, to what extent she
6 has liability.

7 ALJ STERN: Well, here is the situation:
8 That is her situation. She was apparently not -- when
9 were they divorced?

10 MR. AUGUSTINE: I don't know when the divorce
11 was final. It was filed over two years ago.

12 MR. PALFAI: It is still, they are still
13 separated only.

14 MR. AUGUSTINE: Is it separated?

15 MR. PALFAI: Yes. I don't think the divorce
16 decree has been actually handed down yet.

17 MR. AUGUSTINE: I am not aware that the final
18 decree has been entered. I know there has been
19 problems of money to pay divorce lawyers.

20 ALJ STERN: Let's see where we are at on
21 this. If -- have you gentlemen had a chance to talk
22 about any kind of resolution yet?

23 MR. PALFAI: Yes. Yes, I think we are on the
24 track. I don't see any real burning need to set an
25 immediate hearing date.

1 ALJ STERN: Let me ask you this: If you sort
2 of, working along those lines, if we go to a hearing,
3 are there a lot of investors in this? I don't recall.

4 MR. PALFAI: There is.

5 MR. AUGUSTINE: Hundreds.

6 ALJ STERN: Hundreds? How much money? This
7 is one of those million dollar deals, isn't it?

8 MR. PALFAI: It is in the millions. The
9 exact number I don't think anyone knows, but we are
10 trying to come up with it.

11 MR. AUGUSTINE: Somewhere between three and
12 nine million.

13 ALJ STERN: Okay. Tons of investors. So you
14 will have a cast of thousands if there is a hearing
15 then?

16 MR. PALFAI: Yes. We are anticipating
17 probably 20 to 30 witnesses. I am just kidding.

18 ALJ STERN: Oh, okay.

19 MR. PALFAI: Obviously two Division witnesses
20 and just a small sample of investor witnesses.

21 ALJ STERN: All right. How is this? Do you
22 all want to talk this morning for a few minutes or do
23 you want to just sort of continue this matter for 30
24 days or 60 days depending on a possible resolution, or
25 how do you want to address this issue?

1 MR. PALFAI: Go ahead.

2 MR. AUGUSTINE: If I might.

3 I have already been in communications with
4 Mr. Palfai about possible resolutions. This matter is
5 complicated because there are numerous civil actions,
6 adversary proceedings, bankruptcy proceedings for all
7 of the entities for Mr. Couch personally. We do
8 finally now have a trustee who is attempting to --

9 Our difficulty, Judge Stern, is that we can't
10 fix a dollar amount. We don't know what the dollar
11 amount is. And the reason is, and I can share this
12 with you, our theory of the case is there is a Ponzi
13 scheme operating right next to them that overlaps with
14 what my client was doing. And a lot of money runs
15 through that scheme. And we don't know if it is
16 applied appropriately, where it goes, how it ends up,
17 if we should get credit for it, "we" being my client
18 and his entities, his former entities. So we have a
19 big problem that we need to sort through and it is
20 going to take a substantial amount of time.

21 There is a piece of real property that was
22 sold. The money, it was a cash sale, the money is
23 being held in --

24 MR. PALFAI: With the court.

25 MR. AUGUSTINE: -- in a special account set

1 up with the bankruptcy court. And it is a substantial
2 amount of money. It is, what, 2.9 million?

3 MR. PALFAI: 2.9, subject to a lot of claims.

4 MR. AUGUSTINE: Less a number of secured
5 claims and brokerage commissions and whatnot.

6 At the end of the day, we hope to have a
7 little in excess of a million and a half dollars left
8 over of the money. We don't know, to the extent there
9 is any responsibility on my client's behalf, we don't
10 know how much money there is to cover that.

11 ALJ STERN: Okay. Here is what I can do.

12 Mr. Palfai, yes?

13 MR. PALFAI: I just want to add on that. We
14 are coming close to having a restitution figure in
15 mind. Our accountant has been working on this matter
16 for awhile. And I would anticipate that he would have
17 some idea of a restitution figure within the next
18 month.

19 ALJ STERN: All right. Why don't we do this:
20 If -- is the Division satisfied with, at this point in
21 time, a continuance of the proceeding with no date set
22 for either prehearing or hearing, so that you can see
23 if you can work the details out with Mr. Augustine, if
24 you can work that out, and then proceed whichever way
25 you want to proceed with respect to the other

1 entities? I don't know what you are going to do about
2 those.

3 MR. PALFAI: Okay.

4 ALJ STERN: And then I guess you will default
5 against Terry Couch I assume. I don't know what you
6 are going to do on her.

7 MR. PALFAI: Yes, I would imagine we would do
8 that. But she is included in this action.

9 ALJ STERN: Strictly as a marital partner
10 here?

11 MR. PALFAI: Right.

12 ALJ STERN: Well, is that what the Division
13 wants, you just want an indefinite continuance? I can
14 leave it open if you want to request a prehearing.
15 Because if things fall apart and you don't think the
16 thing will be resolved, I would like to have a
17 prehearing before we have the hearing. So I will put
18 the burden on the Division to request a prehearing or
19 the scheduling of a conference to set the matter for
20 hearing --

21 MR. PALFAI: Okay.

22 ALJ STERN: -- such as the case may be.

23 MR. PALFAI: Well, the Division would like to
24 resolve this as soon as possible, because it has been
25 going on for some time. So if you don't want to set a

1 hearing date now, in the future could we at least set
2 a prehearing date and evaluate the progress and, if we
3 haven't made enough, then set a hearing date?

4 ALJ STERN: How long do you want your
5 prehearing -- I would rather do that instead of a
6 hearing. You get into these things, setting for
7 hearing, you have to allow for three, four days, and
8 we are very tight on hearing room space. And it
9 really creates a lot of work. Whereas a prehearing I
10 can insert you in X number of days and I will do it,
11 whatever you want.

12 MR. PALFAI: I guess a month would be
13 appropriate because I think we have some numbers to --

14 ALJ STERN: Let's make it 45 days. That way
15 you have it on --

16 MR. PALFAI: -- on for a prehearing.

17 ALJ STERN: Two weeks. That way you have
18 your 30 days to get your numbers together and a couple
19 days to talk about it.

20 MR. PALFAI: That's fine. As far as the
21 hearing, if it ever came to that, I wouldn't
22 anticipate more than two days on the hearing.

23 ALJ STERN: Even still, like I say, if we
24 have to go to a hearing, I want to plan it out,
25 because we really have been under the gun for space,

1 especially. These rooms don't seem available hardly
2 at all sometimes.

3 MR. PALFAI: Okay. That's fine, then, 45
4 days for a prehearing.

5 ALJ STERN: Let's just do it right now. I
6 think on this case I won't even put a procedural
7 order. I will save everybody some time, possibly, or
8 maybe I will just put out a confirming procedural
9 order.

10 Let's go off the record for a minute. Let me
11 see what I can find about 45 days.

12 (An off-the-record discussion ensued.)

13 ALJ STERN: Let's go back on the record to
14 finalize.

15 Returning to the record, we have had a
16 discussion off the record concerning some of the
17 intricacies and involved nature of this case and
18 possible other counsel for some of the entities
19 because of pending bankruptcy actions.

20 But in any event, counsel for the Division
21 and the respondent Mr. Couch, and for whatever other
22 purposes, have agreed to a prehearing of April 30th,
23 again at 9:30, and in the interim, if the matter is
24 close to resolution or settlement in some way, shape
25 or form, will advise me and we will take it off the

1 hearing calendar.

2 Thank you. That concludes today's
3 proceeding.

4 MR. PALFAI: Can I add one thing?

5 ALJ STERN: On the record?

6 MR. PALFAI: Yes. Would it be okay if, at
7 that second prehearing conference if we haven't
8 reached a resolution, could we schedule a tentative
9 hearing date?

10 ALJ STERN: That we can, if for some reason
11 you haven't resolved it. But, again, I think there
12 are enough factors involved in this proceeding,
13 especially with the other receivers and trustees, you
14 are going to have to be dealing with them somehow,
15 some way, I would assume.

16 MR. PALFAI: We will take care of it.

17 ALJ STERN: Okay. That's it.

18 (The hearing concluded at 10:04 a.m.)

19

20

21

22

23

24

25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5
6

7 I, COLETTE E. ROSS, Certified Court Reporter
8 No. 50658 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full,
10 true and accurate transcript of the proceedings had in
11 the foregoing matter, all done to the best of my skill
12 and ability.
13

14 WITNESS my hand this 22nd day
15 of March, 2003.
16
17
18

19 Colette E. Ross
20 COLETTE E. ROSS
21 Certified Court Reporter
22 Certificate No. 50658
23
24
25